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Supreme Court of the United States

OCTOBER TERM, 1947.

No. 512.

ELDON WILLIAMS, PETITIONER,

VS.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, RESPONDENT.

No. 513.

FRANK E. THOMAS, PETITIONER,

VS.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, RESPONDENT.

No. 514.

ERVIS S. NEIS, PETITIONER,

VS.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, RESPONDENT.

BRIEF OF RESPONDENT, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, IN OPPOSITION TO THE PETITION FOR CERTIORARI.

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THE DECISION BELOW.

The decision of the Supreme Court of the State of Missouri affirming the judgment of the Circuit Court of

Jackson County, Missouri, for respondent, became final October 13, 1947, and is reported as *Williams et al.* v. *The Atchison, Topeka and Santa Fe Railway Company,* 204 S. W. 2d 693 (not yet officially reported in Missouri Reports).

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The "challenges" posed by the petitioner in his summary statement will be fitted into the factual background produced by the evidence in the case, and so viewed will expose their own fallacies.

Petitioner admits the necessity of an interpretation of the collective bargaining agreement between the Brotherhood of Locomotive Firemen and Enginemen and the respondent railroad, hereafter called the Schedule, under which he derived his seniority rights and admits the right of the Brotherhood as the collective bargaining agent to represent him in making the interpretation. He questions neither the necessity for the interpretation nor the authority of the bargaining agent, but questions the method of making the interpretation. He does not charge fraud and has submitted no evidence of arbitrary or discriminatory action. On the contrary, the undisputed evidence shows that the interpretation was made as provided in the Schedule upon which petitioner relies for the creation of his seniority rights, that it was made, as therein provided, by the duly elected and appointed representatives of the carrier and the Brotherhood of Locomotive Firemen and Enginemen in accordance with the authority granted by the Constitution of said Brotherhood, and that petitioner was a member of that organization.

Petitioner twice submitted his claim to the National Railroad Adjustment Board (R. 138-140 and 170-181), and that Board on March 1, 1939, ruled that petitioner's claim

had been handled in accordance with the procedure in said agreement (the Schedule) and an agreed decision reached on the claims which disposed of the case in accordance with said agreement, "It is held that no dispute, therefore, exists between the parties to said agreement" (R. 140-141), and reaffirmed its ruling on March 4, 1940 (R. 147-148). The Board, therefore, had jurisdiction of the petitioner's claim, which it exercised in holding that under the facts submitted by petitioner, no dispute existed.

THE QUESTION PRESENTED.

The petition for writ of certiorari contains no statement of the questions presented as required by Rule 38, paragraph 2. Respondent conceives the question to be whether an interpretation of the Schedule in the manner therein provided made by the carrier and the representatives of the bargaining agent acting within the scope of the authority conferred by the Constitution thereof under the facts and circumstances of this case applying the provisions of the Schedule to the seniority status of a group of the class represented by the bargaining agent is binding upon the individual members.

STATEMENT OF THE CASE.

In 1925, respondent entered into an agreement with the Brotherhood of Locomotive Firemen and Enginemen, hereafter referred to as the Brotherhood, which was the recognized collective bargaining agent of all locomotive firemen employed by respondent. This contract is entitled "Schedule of Rates, Rules and Regulations for Locomotive Firemen." Pertinent parts of this Schedule are set out in pages 95 to 99 of the Record and include Article II, which states that the General Committee of the Brother-

hood will represent all locomotive firemen in the making of contracts and interpretations thereof. The Schedule contains the provisions giving rise to seniority rights, whether permanent or temporary (R. 94-99).

Petitioner was a member of the Brotherhood (R. 2 and 27-28). The pertinent provisions of the Constitution of that organization are set out on pages 99 and 100 of the Record and include a provision giving the General Grievance Committee authority to make and interpret agreements with representatives of railway companies concerning rates or wages, rules respecting seniority rights, adjustments of grievances, and other matters necessary in the interest of the members they represent. This provision also gives the General Chairman authority to interpret the Schedule when the General Grievance Committee is not in session.

Petitioner in October of 1936 was in respondent's employ as a fireman on the Panhandle Division (R. 102-3). He was not in active service at that time and during the course of the month, October 17, 1936, he went to work as a fireman on the Pecos Division (R. 104). At that time, he was a borrowed man, as found from all the evidence by the trial court (R. 324), in accordance with the meaning of Article XVII of the Schedule (R. 98).

Petitioner remained in service on the Pecos Division until January 15, 1937 (R. 104), at which time he was granted a leave of absence. While he was on leave of absence, he was cut off the Pecos Division board and seniority roster, on March 12, 1937 (R. 105). He made no request for transfer to the Pecos Division (R. 134). He returned to work on the Panhandle Division and later returned to the Pecos Division, where he went to work on September 29, 1937. At that time, he was placed on the board with a seniority date of October 17, 1936 (R. 119). The placing of petitioner on the board in this manner put him ahead of

firemen whose seniority dates were subsequent to October 17, 1936, and who had elected to remain permanently on the Pecos Division in accordance with Article XVII of the Schedule, and put him ahead of firemen who had been hired on the Pecos Division between the dates of June 1, 1937, and September 29, 1937 (R. 119, 105-108).

This placing of petitioner's name on the board displaced Fireman Paul Sellers, whose seniority date was June 30, 1937, because the number of names that could be carried on the board was limited by the amount of work available (R. 120).

The Local Chairman of petitioner's collective bargaining agent complained that this act was causing much disturbance among the men and protested against such an interpretation of the Schedule as would place Williams' name on the board with the October 17, 1936, seniority date, not only because Williams had knowingly failed to comply with the rule of the Schedule requiring him to file application for transfer within the six months' period as provided in Article XVII, but also because such an interpretation would require the recalling of about 20 other members of Williams' group and the placing of all of these men on the roster ahead of men who had been hired in June of 1937 (R. 120, 121). As a result of this protest and a letter from the General Chairman relating to the application of Article XVII of the Schedule to members of the petitioner's group (R. 122-125), a meeting was held in the General Manager's office of respondent railroad in Amarillo, Texas, on October 28, 1937 (R. 125).

Back in 1931 the Brotherhood had made a formal request that firemen who were cut off the lists on divisions of the respondent's railroad be permitted to accept service on any division where firemen were needed before new men were hired. The carrier in response to this request agreed that it would continue its practice of calling on

neighboring divisions for men who might be laid off in force reduction prior to employing firemen from the outside (R. 131-132). This request was renewed by the General Chairman in July, 1936, in a letter calling attention to the fact that all furloughed firemen had been called back into service on the Pecos Division, but that there were a large number of furloughed firemen on the Panhandle Division and stating it would be appreciated if the carrier would arrange to transfer furloughed men from other divisions before employing new men on any division. This request was passed on by the carrier's General Manager to the Mechanical Superintendents (R. 101-102).

An exchange of correspondence between the carrier and the General Chairman (Exhibits 7-16, R. 109-117) from May through September of 1937 shows that there had been considerable confusion as to the handling of firemen who were employed on one division of the railroad and were in service on another division—the railroad contending that such men were hired men on both divisions and entitled to permanent seniority rights on both divisions until they would be called for service on both divisions at the same time. The position of the General Chairman was that such men were borrowed or transferred men within the meaning of Article XVII of the Schedule and that they were entitled to only temporary seniority rights for a period of six months on the division to which they were so transferred and in service, unless within that period they elected to remain permanently on that division and released their rights on their home division. When the meeting was held at Amarillo, the Brotherhood was still contending that Article XVII was the only provision applicable to this situation (R. 122-125).

J. E. Dyer, the authorized representative of respondent, was present at the Amarillo meeting for respondent; W. C. Keiser, General Chairman of the General Grievance

Committee, and C. J. Eastham, Chairman of the Grievance Committee of the Local Lodge, were present as authorized representatives of the Brotherhood (R. 125). At this meeting, the rights of petitioner and fifty-two other firemen who were or had been on the Pecos Division (R. 105-108) were considered.

At the time of the holding of this meeting there were thirteen firemen in service on the Pecos Division who had come to that Division from other Divisions of the respondent's railroad and who had relinquished their seniority rights on their home Divisions by electing to remain permanently on the Pecos Division in accordance with the provisions of Article 17, and they therefore had no seniority rights except those on the Pecos Division. There were also twenty-one men who had been employed on the Pecos Division during the period from June 1, 1937, to October 28, 1937, who had seniority rights on that Division and on no other. Also, at this time there were eighteen men who had come to the Pecos Division from other Divisions of the Respondent's railroad, and after working on the Pecos Division had not elected to remain on that Division but had returned to their home Divisions. The names and seniority dates of all these men are set out on pages 105-108 of the Record.

The interpretation made at the Amarillo meeting was that the provisions of Article XVII were applicable to those firemen who had come from other divisions of respondent's railroad to and had been in service on the Pecos Division and that these men, as a result of such service on the Pecos Division, had only temporary seniority rights in the absence of the filing of an election to transfer permanently within the six months' period from the date of their first service (R. 132). The effect of this interpretation was that only those firemen who had come to the Pecos Division from other divisions and had elected to permanently trans-

fer to the Pecos Division as required by Article XVII acquired permanent seniority rights on that division. Those in petitioner's group which had not so elected had acquired only the temporary rights.

It was agreed that in the future, firemen would be permitted to establish permaner seniority rights on two or more divisions under Article XI of the Schedule and retain such rights until such time as they might be called for service on two or more divisions at the same time, in which event they would be required to elect between the respective divisions.

Petitioner appealed to the Executive Committee of the Brotherhood from the action taken at the Amarillo meeting; and on March 18, 1938, the said Executive Committee sustained said action (R. 128).

Petitioner then appealed to the President of the Brotherhood, who assigned the matter to Vice President H. M. Van Sant, who conducted a formal hearing at Wichita, Kansas, on October 18, 1938, at which petitioner was present as well as other members and officials of the Brotherhood. After a full hearing, the President of the Brotherhood affirmed the decision of the Executive Committee and denied petitioner's appeal (R. 128-135).

Thereafter, on February 13, 1939, petitioner filed a claim with the First Division of the National Railroad Adjustment Board. From the facts set forth in said claim, the Board held that the matter had been handled in accordance with the Schedule and that no dispute existed. On January 29, 1940, petitioner filed a second claim, based upon the same facts, with the same Board, which resulted in the same ruling (R. 138-148).

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI.

I.

No substantial question is presented respecting the correctness of the decision below.

Petitioner admits the necessity of an interpretation of the Schedule between the Brotherhood and the respondent railroad, under which he derived his seniority rights and admits the right of the Brotherhood as the collective bargaining agent to represent him in making the interpretation. He questions neither the necessity for the interpretation nor the authority of the bargaining agent, but questions the method of making the interpretation. He does not charge fraud and has submitted no evidence of arbitrary or discriminatory action. On the contrary, the undisputed evidence shows that the interpretation was made as provided in the Schedule upon which petitioner relies for the creation of his seniority rights, that it was made, as therein provided, by the duly elected and appointed representatives of the carrier and the Brotherhood in accordance with the authority granted by the Constitution of said Brotherhood, and that petitioner was a member of the Brotherhood.

Respondent's answer to petitioner's contention that the exchange of correspondence between the carrier and the General Chairman resulted in a "recognized interpretation" of the Schedule.

Petitioner contends that there was an interpretation of the Schedule during an exchange of correspondence be-

tween the carrier and the General Chairman of the bargaining agent between May and September of 1937, and he relies particularly upon a letter written by the General Chairman September 8, 1937 (R. 115-116). Petitioner calls this a "recognized interpretation" of the Schedule, and says that as a result of this "recognized interpretation" he established permanent seniority rights on the Pecos Division from October 17, 1936. Respondent contends that this exchange of correspondence did not constitute an interpretation because there was no definite unqualified agreement, and insists that the Schedule was not interpreted and applied except at the meeting held in Amarillo, Texas, on October 28, 1937, between the representative of the General Manager of the carrier and the General and Local Chairmen of the bargaining agent.

Petitioner attacks the interpretation made at the Amarillo meeting on the grounds (1) that the representatives of the bargaining agent had no authority to represent him for the purpose of interpreting the Schedule, (2) that petitioner had no notice of the meeting, and (3) that the interpretation was retroactive. It is apparent that any and all of these contentions apply with equal force to the "recognized interpretation" relied on by petitioner; that is, this so-called "recognized interpretation," which is the foundation of petitioner's arguments for the granting of certiorari, was made by the same General Chairman acting for the Firemen, was made without notice to or knowledge of petitioner, and was made more than ten months after it was to have been effective.

It is undeniable, therefore, that petitioner admits the necessity of the interpretation of the Schedule to determine which provisions thereof were applicable to his group, and it is equally undeniable that he admits the authority of the General Chairman and of the bargaining agent to represent him in making an interpretation and that such an inter-

pretation is valid without notice to him, and is valid when given a "retroactive" application. Petitioner, by advancing the "recognized interpretation" theory, has himself destroyed his arguments against the validity of the interpretation made at the Amarillo meeting.

The Court will see from this that all petitioner's "challenges" concerning the "right, power, and authority of a Union bargaining agent" set forth in paragraphs (a) to (f) at pages 2 to 4 of the petition, have no substance whatever, and that while petitioner says he is challenging such right, power, and authority, he is in reality attempting to rely on them.

The "recognized interpretation" contended for by petitioner was non-existent because there never was an interpretation between the carrier and the bargaining agent until the meeting at Amarillo. What is the meaning of "recognized interpretation"? It is one that has been definitely and conclusively agreed upon and is plainly understood by all parties. It is something as to which there is only one point of view.

The Court will note that Keiser did not say, as a final summing up of the correspondence referred to by petitioner, that he was willing to go along with the interpretation which he had continually been resisting. What he said was that he was willing to go along if * * *. His willingness was conditioned upon the assumption that the matter in controversy could and would be adjusted in the manner described in his letter dated September 8, 1937 (R. 116), and in his letter of October 19, 1937 (R. 122-125), he pointed out that the condition in his letter of September 8 could not be fulfilled and that Article XVII was the only Schedule provision applicable.

Petitioner has isolated a part of Keiser's letter of September 8 from its context and is asking the Court to ignore the essential parts of the controversy involving the

53 firemen and to accept as a "recognized interpretation" something which was stated as conditional upon a proper adjustment of the whole controversy. Since there was a complete failure of the condition which Keiser attached to his remark, the Supreme Court of Missouri was unquestionably right in rejecting petitioner's contention that it was a "recognized interpretation."

Nothing was done or said by Keiser in furtherance of this correspondence except what denoted his unwillingness to accept anything but a straight application of Article XVII to the entire group of firemen involved in the dispute. Nothing was done by Keiser to evidence petitioner's contention that this correspondence is entitled to be regarded as a "recognized interpretation." On the contrary, what was done by him, following this exchange of correspondence, completely negatives any intention on his part to recede from the position he had been maintaining. Sellers' grievance was only an incident or an instrument which shaped up and brought into focus the entire controversy over the respective rights of 53 firemen who had gone to work on the Pecos Division.

The Petitioner would have the Court consider a fragment of Keiser's letter as a "recognized interpretation" of the Schedule. Keiser's inconclusive and temporary submission to what in the same letter he protested against was less entitled to be considered as a "recognized interpretation" than would a payment under protest to be regarded as an acknowledgment of a debt.

The only interpretation of the Schedule was made at the Amarillo meeting in October, 1937.

Article II of the Schedule provides for interpretation of its provisions by the General Committee of the Brotherhood. It states:

"The General Committee of the Brotherhood of Locomotive Firemen and Enginemen will represent all locomotive firemen in the making of contracts governing rates, rules and working conditions and interpretations thereof.

"The right of any engineer or fireman to have the regularly constituted committee of his organization represent him in the handling of his grievances, under the recognized interpretation placed upon the schedule involved by the officials of the Company and the General Committee making the same is conceded" (R. 95-96).

It was recognized at the time the agreement was entered into that it would not automatically fit any and all situations which might arise, and that interpretations must be made from time to time, and the persons to make such interpretations were designated.

Not only was the necessity for such interpretations recognized by the Brotherhood and respondent at the time of making the agreement, but it was also recognized in the constitution of the Brotherhood. Portions of this constitution from the revision of January 1, 1932, are set out on pages 99 to 100 of the Record and include the following:

"Sec. 8. (a) General grievance committees shall have authority to make and interpret agreements with representatives of railway companies concerning rates of wages, rules respecting seniority rights, adjustments of grievances and other matters necessary in the interest of the members they represent. When the general grievance committee is not in session, the general chairman has authority to interpret the schedule.

"(b) General grievance committees shall have authority on their respective lines to regulate the mileage of firemen in accordance with the policy of

the organization and shall also have complete jurisdiction over all matters of seniority and assignment to runs.

"(c) All rules, regulations, contracts and agreements agreed upon by officials of a railway company, and a general grievance committee or/its representatives, shall be binding upon all members working within the jurisdiction of the committee."

Petitioner charges that Keiser, admittedly General Chairman of the Brotherhood, and C. J. Eastham, admittedly Chairman of the Grievance Committee of the Local Lodge of that organization at Clovis, New Mexico (the headquarters of the Pecos Division) (R. 125), were not authorized to represent him at the Amarillo meeting, at which time Eastham and Keiser met with Dyer, admittedly the authorized representative of respondent. From the foregoing quotations from the Schedule and the Constitution of the Brotherhood, it is apparent that petitioner's contention is entirely erroneous. Petitioner as a member of the Brotherhood cannot claim that he is not bound by the provisions of its Constitution. The Schedule provides that all firemen in respondent's employ shall be represented in the making and interpreting of the Schedule by the General Grievance Committee, and the Constitution of the Brotherhood provides that when the General Grievance Committee is not in session the General Chairman shall have authority to interpret the Collective Bargaining Agreement. Keiser, therefore, did have actual express authority to represent and did represent all of the firemen in respondent's employ, and particularly those involved in the controversy, at the time he met with Dyer in the General Manager's office at Amarillo on October 28, 1937.

In the case of *Elgin, Joliet & Eastern R. Co.* v. *Burley*, 325 U. S. 711, 327 U. S. 661, this court considered the question of authority and in its first opinion at page 738 said:

> "Authority might be conferred in whatever ways would be sufficient according to generally accepted or 'common law' rules for the creation of an agency, as conceivably by specific authorization given orally or in writing to settle each grievance, by general authority given to settle such grievances as might arise, or by assenting to such authority by becoming a member of a union and thereby accepting a provision in its constitution or rules authorizing it to make such settlements."

In its second opinion, 327 U. S. 661, at page 663, the Court said:

> "Furthermore, so far as Union members are concerned * * * it is altogether possible for the Union to secure authority in these respects within well established rules relating to unincorporated organizations and their relations with their members by appropriate provisions in their by-laws, constitution, or other governing regulations, as well as by usage or custom."

Petitioner's claim that Article XVIII (R. 98-99) of the Schedule was not complied with in that no written statement of the questions at issue was submitted to the General Manager. We deny petitioner's right to question compliance with this article, but this is immaterial since the Article was complied with by Exhibit 24 (R. 122-125).

Petitioner also contends that the interpretation reached at the Amarillo meeting was invalid because it was not reduced to writing and refer to Article XVIII of the Schedule. There is nothing in this article or elsewhere which has any application to the form in which such a determination is to be rendered.

At the time of the holding of this meeting there were thirteen firemen in service on the Pecos Division who had come to that Division from other Divisions of the respondent's railroad and who had relinquished their seniority rights on their home Divisions by electing to remain permanently on the Pecos Division in accordance with the provisions of Article 17 of the Schedule, and they therefore had no seniority rights except those on the Pecos Division. There were also twenty-one men who had been employed on the Pecos Division during the period from June 1, 1937, to October 28, 1937, who had seniority rights on that Division and on no other. Also, at this time there were eighteen men who had come to the Pecos Division from other Divisions of the respondent's railroad, and after working on the Pecos Division had not elected to remain on that Division but had returned to their home Divisions. The names and dates of all these men are set out on pages 105-108 of the Record.

At this meeting it was agreed that all these men should be handled in accordance with Article XVII of the Schedule; but that, after the date of the meeting, it would be considered that furloughed firemen who accepted service on any other Division than their home Division would be considered as hired men (meaning that they could hold seniority rights on two or more Divisions so long as there was no conflict, that is, so long as they were not called for service on two Divisions at the same time) (Ex. 29, R. 128). Petitioner as well as all other firemen from other Divisions who had not elected to permanently transfer to Pecos Division while working there in 1936 and 1937, were given dates as of their first service the last time they went to work on the Pecos Division, and were also permitted to hold their original seniority dates on their Home Divisions until such time as there might be a conflict. All those firemen who had, within the

six-months' period, elected to transfer permanently to the Pecos Division were given their original dates on the Pecos Division but lost their seniority rights on their home Division (Ex. 29, R. 128-135).

That this interpretation of the Schedule was reasonable and not arbitrary or discriminatory is most clearly shown by considering the effect of a different method of handling. Either these men had to be handled by applying Article XVII of the Schedule or some new agreement had to be made. Let us suppose that these representatives at this meeting in Amarillo had disregarded Article XVII. Eleven men (R. 106) had relinquished their seniority rights on the Slaton Division and had accepted permanent seniority rights on the Pecos Division. If Article XVII had not been applied, these men who had acted in reliance upon it would have lost their seniority rights on the Pecos Division; and if, in some manner, their rights on the Slaton Division could have been restored to them, such restoration would have affected all the firemen on the Slaton Division roster. The same applies to the man from the Panhandle Division and the man from the Western Division, who had so elected to remain permanently on the Pecos Division (R. 106). In other words, thirteen men would have lost permanent seniority rights on the Pecos Division which they had acquired by acting in accordance with Article XVII, and, if in some way their rights on their home Divisions could have been restored to them, the seniority rights of all of the firemen on three other Divisions would have been disturbed by these men being sent back.

If petitioner has a right to have his original date of October 17, 1936, then the other eighteen men set out on pages 107-8 of the Record have the same rights. Assuming that all these men had been given these rights, it is apparent that there would have been a conflict be-

tween these men and the list of twenty-one men (R. 106-7) who were hired on the Pecos Division (and had no rights on any other Division), after June 1, 1937. Presumably, therefore, the men in the first list of eighteen men would have gotten some sort of seniority status on the Pecos Division, and maybe their rights on their home Divisions could have been retained and maybe not. But, in any event, there would have been great conflict between the men on the Pecos Division in these three separate groups as to who had what rights. Clearly, the eighteen men who had not elected to remain would have been entitled to prior seniority dates to the twenty-one men who had been hired after June 1, 1937. This would have worked a great injustice to these latter men. In other words, where all these fifty-three men had been handled and treated for a period of more than a year on the Pecos Division in accordance with the provisions of Article XVII, it would not have been practicable if possible, to have handled the matter in any other way than the way in which it was handled.

Therefore, the interpretation which was made was the only one which could have been made without creating confusion and conflicts among the seniority rights of so many men that it could never have been straightened out. Petitioner loses sight of the fact that he is asking this Court to say that his wishes, and his alone, should be considered and that the rights of these other fifty-two men should have been completely disregarded.

However, the fact that the action taken at Amarillo was not one hundred per cent favorable to the group of which petitioner was a member in no way implies that it was arbitrary or unfair. This action was not the making of a new agreement nor was it for the purpose of getting rid of the petitioner, as he contends. It was merely the application of the provisions of the contract under which

all these men had worked for many years, as required by the provisions of that contract. To have reached any other decision, it would have been necessary to go outside the terms of the collective agreement; and, if this had been done, there might be a legitimate complaint that the decision was arbitrary and contrary to law.

The only new agreement made at the Amarillo meeting was that in the future firemen could hold seniority rights on more than one Division of the Railroad at the same time. Such an agreement, of course, is entirely in accord with the Railway Labor Act and the established law but has no bearing on the issues in the present case. All that was done at that meeting, so far as the issue in this case is concerned, was to apply the provisions of the Schedule.

The provisions of the Schedule show that no rights were taken from the petitioner by the action of this meeting. Under the agreed interpretation and application of the Schedule, the petitioner had acquired no rights under that Schedule which could have been taken from him because, when he went to work on the Pecos Division in 1936 the only right which he acquired was to work on that Division with a seniority date of October 17, 1936, for a period of six months, unless within that time he elected in writing to relinquish his rights on the Panhandle Division and remain permanently on the Pecos Division. This he admits he did not do (R. 134). He, therefore, had no right to a seniority date of October 17, 1936, on the Pecos Division which could have been taken from him at that meeting, because no such right existed.

All of petitioner's contentions have been presented to and considered by the Trial Court and the Supreme Court of Missouri. The Trial Court, after considering all of the facts pertaining to the interpretation made at the Amarillo meeting, said (R. 324):

"Therefore, the matter determined at the Amarillo meeting and appealed by plaintiff to the Executive Committee of the Brotherhood on December 14th and thereafter appealed from the Executive Committee to the President of the Brotherhood did not constitute a grievance affecting the private or individual right of plaintiff but was an act within the jurisdiction of the authorities in interpreting generally the seniority rights not of plaintiff but of a group under a given set of facts.

"As to the question of notice, plaintiff received notice of the action taken at Amarillo and personally presented his view of the proper construction of the rules touching seniority to the Executive Committee of the Brotherhood and later to the President of the Brotherhood, and in the absence of a showing of bad faith, improper conduct, or failure to properly perform the duties on the part of the representatives of the Brotherhood, their finding as to the seniority rights of the group involved should not be disturbed by the court."

The Supreme Court of Missouri, after considering all the points which petitioner has presented to this Court, said:

"Williams contends that he has been deprived of a valuable right without due process of law. We may concede that a seniority status is a property right, but we do not concede that Williams was deprived of any such right. The decision made merely established what right he had." 204 S. W. 2d 693, at page 696.

II.

Petitioner twice submitted his claim to the National Railroad Adjustment Board (R. 138-140 and 170-181) **and that Board on March 1, 1939, ruled that petitioner's claim had been handled in accordance with the procedure in said agreement (the Schedule) and an agreed decision reached on the claims which disposed of the case in accordance with said agreement, "It is held that no dispute, therefore, exists between the parties to said agreement"** (R. 141), **and reaffirmed its ruling on March 4, 1940** (R. 147-148). **The Board, therefore, had jurisdiction of the petitioner's claim which it exercised in holding that under the facts submitted by petitioner, no dispute existed.**

Since it is apparent from the foregoing that petitioner has not been deprived of any rights without due process of law, we deem it unnecessary to review the authorities supporting the conclusiveness of the determination by the National Railroad Adjustment Board in the claim brought by petitioner himself that no dispute existed between the parties.

CONCLUSION.

The decision of the Supreme Court of Missouri was so clearly right as to leave no question for this Court's review and no reason for the granting for a writ of certiorari. The Missouri Supreme Court decided no Federal question, substantial or otherwise, in a way probably in conflict with the applicable decisions of this Court, but on the contrary followed and quoted from the only applicable decision, that of *Elgin, Joliet & Eastern R. Co.* v. *Burley*. No rights were taken from petitioner without due process of law, and in fact no rights were taken from him at all. The opinion of

the Trial Court and of the Supreme Court of Missouri show conclusively that petitioner's rights were not changed, but were merely established by the interpretation made by the authorized parties.

Respondent prays that the writ be denied.

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